**THE HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.NO. 9159 OF 2006**

**DATED: 28.04.2006**

**BETWEEN:**

Vepparla Sengaiah and others .. Petitioners

And

State of A.P. Rep.by its Secretary and others

.. Respondents

**THE HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.NO. 9159 OF 2006**

**ORAL ORDER:**

Heard the learned counsel for the petitioners and the learned Government Pleader for land Acquisition and the writ petition is disposed of at the stage of

admission.

The petitioners claim to be owners of extents of lands as specified in the writ petition, in Kongapadu, Nagulapadu, Addanki of Prakasam District. On account of the Gundlakamma Reservoir Project certain persons were displaced on account of the actual or projected submergence by the reservoir. To rehabilitate such displaced persons, the petitioners' lands are sought to be acquired and in that behalf a notification under Section.4(1) of the Land Acquisition Act, 1894( for short "the Act") was issued on 11-04-2006 invoking the urgency clause under Sec.17(4) of the Act and dispensing with the enquiry under Section 5-A of the Act. Gundlakamma Reservoir Project was conceived in 2005. As conceived there should have been technical appraisal as to the level of the submergence on the basis the project specifications and technical survey of the contours that might fall to submergence under the project. The level human displacement occasioned by the project ought also to have been estimated in any system of good governance and adequate and timely steps or strategies evolved for rehabilitation as a part of the acquisition process. In such event the respondents had ample time, opportunity and the necessary wherewithal to identify the areas for rehabilitation of the displaced persons.

An enquiry to be conducted under Sec.5-A of the Act calling for objections to an acquisition proposal is a valuable right. This position in law is too well established and does not warrant an idle parade of familiar law. The learned Government Pleader for Land Acquisition does not also seriously resist the legal principle that dispensing with sec.5-A enquiry is not a ritual that should indiscriminately be followed by the executive as the matter of tradition. In the circumstances of this case there appears no justification whatsoever for eschewing the opportunity of hearing under Sec.5-A and calling for objections and considering the same before proceeding with the acquisition notification dated 11-04-2006.

The petitioners assert that they are small farmers and if these lands are acquired they and their families would suffer total deprivation of livelihood. They assail the acquisition on substantive grounds by stating that depriving them of lands for the purposes of rehabilitating project oustees constitutes a deviant and malicious exercise of administrative power. They also allege discriminatory

treatment, viz., that while oustees of Gundlakamma Reservoir Project are being rehabilitated by alternative allotment of lands, the petitioners are also derivative oustees are merely to be provided monitary compensation and therefore discriminatory standards are being applied by the State. They also allege that the villages of Devarakonda (one of the villages) effected by the submergence under the project have sought the lands of the petitioners for their rehabilitation and the State ought not to have accepted such request of the oustees. Petitioners also allege that there is no public purpose involved in depriving the petitioners of their lands and giving the same to persons displaced by the Gundlakamma Reservoir Project. These are all potent objections that require to be considered by the acquiring authority and a rational decision is possible only if an opportunity were provided under Sec.5-A of the Act. Dispensing with 5-A enquiry by arbitrarily invoking the urgency clause under Sec.17(4) has become a regnant feature of acquisition processes by the State. In the case on hand there appears no justification whatsoever for dispensing with the enquiry under Sec.5-A of the Act.

For the aforesaid reasons the declaration under Sec.6 of the Act dated.17-04-2006 by the proceedings in R.C. D3/205/2006 of the 2nd respondent is quashed. The respondents are directed to cause an enquiry under Sec.5-A of the Act by following the due process under Sec.5-A of the Act.

As the urgency clause under Sec.17(4) has been invoked arbitrarily without any justification whatsoever and wholly oblivious to the relevant facts that justify invoking of the urgency clause and as valuable rights of the petitioner by way of affording them an opportunity of objecting to the acquisition, legislatively ensured under Sec.5 of the Act, have been jettisoned without any justification whatsoever, in the considered view of this Court the decision to invoke the urgency clause and eschew the procedurally fair requirement of causing an enquiry under Sec.5-A of the Act, is a vagrant exercise of administrative decision making process.

Accordingly this Court considers it appropriate to impose costs on the respondents for more than one reason. (a) for injuring the petitioners in respect of their right to object to the acquisition under Sec.5-A of the Act and without due cause and (b) for burdening this Court with an avoidable litigation.

The writ petition is allowed with costs in an amount of Rs.21,000/-(Rupees twenty one thousand only) of which Rs.1000/- each shall be paid to the petitioners and Rs.5,000/- to the Secretary State Legal Services Authority, High Court Buildings, Hyderabad, within six weeks from the date of receipt of this order.

_____

GODA RAGHURAM,J

28TH APRIL 2006

Note:

Issue CC

As soon as

Possible.

(B/O) kvrm/tsnr